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Eduardo Nebot

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EXAMINER

SHEDRICK, CHARLES TERRELL

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,104	<b>Applicant(s)</b> NEBOT ET AL.	
	<b>Examiner</b> CHARLES SHEDRICK	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/29/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 10/29/08 have been fully considered but they are not persuasive.
2. Regarding claims 17, 18 and 21 Applicant indicates that Claim 21 does not use the phrase "adapted to". As the phrase "adapted to" used in each of claims 17 and 18 constitutes a structural limitation to the subject matter disclosed, the language of claims 17 and 18 positively limits the subject matter in a patentable sense, and therefore, the objection should be withdrawn. Furthermore, Ex parte Ollar finds that if any interpretation of the claimed subject matter can be found in the specification, then use of the phrase "adapted to" can still be a valid limitation. Ex Parte Ollar, Appeal No. 94-3182, Application Number 07/899,707. Such interpretations of the structural limitations of claims 17 and 18 can be found throughout the specification of the present application.
3. The Examiner respectfully submits that the Examiner's comments which reads, *"It is noted, with respect to claims 17-18 and 21, that the language used by the Applicant merely suggests or makes optional those features described as "adapted to": it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchinson, 69 USPQ 138.* " is not an objection, but a mere attempt to assist the Applicant with understanding the manner of examining when the claim language is given the broadest reasonable interpretation.

Art Unit: 2617

4. Applicant argues that the claimed mobile station is adapted to receive and/or transmit information by wireless communication in one region when in that region, and receive and/or transmit information to other regions when in those regions. Troemel fails to disclose such elements.

5. However, The Examiner respectfully disagree. As a first matter consider that Troemel anticipated the limitation of various prior art such as communication between motor vehicles and an outside data network see page 3 lines 8-10. Troemel teaches to overcome the problems of prior art by providing a network that utilizes mobiles, defined as mobile carriers...equipped with data transceivers for communicating with other mobiles and the internet or other outside networks (e.g., see at least page 3 line 30- page 4 line 9). Therefore, it is respectfully submitted that Troemel does teach at least the claimed mobile station is adapted to receive and/or transmit information by wireless communication in one region when in that region, and receive and/or transmit information to other regions when in those regions.

6. As Troemel does teach or suggest every element of independent claim 13, as well as claims 14-22 dependent thereon, The Examiner respectfully submit that the anticipation rejection based upon Troemel is maintained as proper.

7. Applicant argues that Troemel has been previously discussed as failing to disclose each and every limitation of the pending claims. Kyrtos also fails. Specifically, Kyrtos fails to disclose a virtual wireless computer network having a plurality of stations that are arranged to interface with each other by wireless communication in two or more regions and within each region. As the combination of Troemel and Kyrtos does not teach or suggest all of the claim

Art Unit: 2617

limitations of independent claim 13, as well as claims 14-22 dependent thereon, Applicants respectfully submit that the obviousness rejection based upon Troemel and Kyrtos is improper and must be withdrawn., he is respectfully invited to telephone the undersigned at the number listed below.

8. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Applicant's arguments do not overcome the primary reference for at least the reasons noted by the Examiner remarks above. Therefore, the dependent claims are not allowable for at least those reason.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **13-18 and 21** are rejected under 35 U.S.C. 102(b) as being anticipated by Troemel WO 02/25968 A1.

Consider **claim 13**, Troemel teaches a virtual wireless computer network including a plurality of stations arranged to interface with each other by wireless communication in two or more regions and within each region(e.g., **a virtual pipe between source and destination**)( see **at least abstract, page lines 15-20, page 6 lines 23-25, page 12 lines 18-22, see also figures 3 and 4** ), at least one of said regions being beyond normal wireless communication range of

Art Unit: 2617

other said regions (e.g., **outside network**) **see at least the abstract, page 4 line 16 - 5 line 7)**, and wherein at least one station is a mobile station able to travel between regions (e.g., **mobiles 503 504 and 506 of figure 5 can travel, see also examples from page 4 lines 5-8 and page 13 lines 13-18)**), said mobile station being adapted to receive and/or transmit information by wireless communication in one region when in that region, and receive and/or transmit information to other regions when in those regions (e.g., **when mobile passes a base station it will dump data bound for an outside network and the base station will dump data bound for a destination mobile to the passing mobile**)(see at least the abstract, page 4 line 16 - 5 line 7).

Consider **claim 14 and as applied to claim 13**, Troemel teaches wherein one or more of the mobile stations is located in a vehicle(e.g., **mobiles 503 504 and 506 of figure 5 can travel, see also examples from page 4 lines 5-8 and page 13 lines 13-18**).

Consider **claim 15 and as applied to claim 13**, Troemel teaches wherein one or more of the mobile stations is located on a person able to travel between regions(e.g., **see examples from page 4 lines 5-8 and page 13 lines 13-18**).

Consider **claim 16 and as applied to claim 13**, Troemel teaches wherein at least one of the stations is hard wire connected to a backbone system (e.g., **see page 10 line 7- page 11 line 11 and page 11 line 23- page 12 line 6 in addition to related examples of the specification regarding various device types**).

Consider **claim 17 and as applied to claim 13**, Troemel teaches wherein the stations include slow moving stations primarily adapted to be operating within regions, and fast moving

Art Unit: 2617

stations primarily intended to be moving between regions (e.g., walking individuals and cars) **(e.g., see examples from page 4 lines 5-8 and page 13 lines 13-18).**

Consider **claim 18 and as applied to claim 13**, Troemel teaches wherein the network is also adapted to be used as a safety alert system providing advice to the operator of a station of the presence of other stations that may be in the immediate proximity **(e.g., see note above regarding intended use in addition to equivalent usage recited on page 4 lines 8-12).**

Consider **claim 21**, Troemel teaches a method of communicating information comprising the steps of providing a virtual wireless network as claimed in claim 13, and using that network to transfer information between regions **(e.g., a virtual pipe between source and destination)( see at least abstract, page lines 15-20, page 6 lines 23-25, page 12 lines 18-22, see also figures 3 and 4 ).**

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 2617

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Troemel WO 02/25968 A1 in view of Kyrtos et al. US Patent No.: 5,375,059.

Consider **claim 19 and as applied to claim 18**, Troemel teaches the claimed invention except wherein the velocities of each of the stations are taken into account and a warning given to the operator appropriate to the danger detected.

However, in analogous art, Kyrtos teaches wherein the velocities of each of the stations are taken into account and a warning given to the operator appropriate to the danger detected (**e.g., see speed control and autonomous versus manual control in col. 79 and 80**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time invention was made to modify Troemel to include wherein the velocities of each of the stations are taken into account and a warning given to the operator appropriate to the danger detected for the purpose of assessing vehicle position as taught by Kyrtos.

Consider **claim 20 and as applied to claim 19**, Troemel teaches when provided to the operator of an oversize off-road haul truck and wherein both the velocity of the haul truck, and the position of any potential intruders in the vicinity of the haul truck are taken into



Art Unit: 2617

consideration (e.g., the system applied to a stolen vehicle also military uses reads on **oversize off-road haul trucks and potential intruders** )(page 4 lines 5-15).

However, in analogous art, Kyrtos teaches wherein the velocities of each of the stations are taken into account and a warning given to the operator appropriate to the danger detected (e.g., see **speed control and autonomous versus manual control in col. 79 and 80**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time invention was made to modify Troemel to include wherein the velocities of each of the stations are taken into account and a warning given to the operator appropriate to the danger detected for the purpose of assessing vehicle position as taught by Kyrtos.

Consider **claim 22 and as applied to claim 21**, Troemel teaches the claimed invention except when used in a mining environment.

However, in analogous art, Kyrtos teaches when used in a mining environment (e.g., see **col. 9 line 16**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time invention was made to modify Troemel to include a mining environment for the purpose of assessing vehicle position as taught by Kyrtos.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 2617

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES SHEDRICK whose telephone number is (571)272-8621. The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles Shedrick/  
Examiner, Art Unit 2617

/Lester Kincaid/  
Supervisory Patent Examiner, Art Unit 2617